

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 23rd day
of November, 2009.

Crain Pest and Lawn, L.L.C.,)	
)	
Complainant,)	
)	
v.)	
)	
Embarq Missouri, Inc., d/b/a Embarq,)	
)	
Respondent.)	

Case No. TC-2010-0053

ORDER DISMISSING COMPLAINT FOR FAILURE TO PROSECUTE

Issue Date: November 23, 2009

Effective Date: December 3, 2009

On August 5, 2009, Crain Pest and Lawn, L.L.C. ("CPL"), filed a formal complaint pursuant to rule 4 CSR 240-2.070 against Embarq Missouri, Inc., d/b/a Embarq ("Embarq"). The complaint is signed by Keith D. Kissee, the owner of CPL. However, CPL's complaint, as filed, demonstrated that it, a limited liability company, lacked appropriate legal representation.

Commission Rule 4 CSR 240-2.040(5), specifically addressing practice before the Commission, states:

A natural person may represent himself or herself. Such practice is strictly limited to the appearance of a natural person on his or her own behalf and shall not be made for any other person or entity.

The underlying basis for this rule is found in RSMo sections 484.010 and 484.020.¹ Section 484.010 defines the practice of law as "the appearance as an advocate in a

¹ All statutory citations refer to RSMo 2000 unless otherwise noted.

representative capacity or the drawing of papers, pleadings or documents or the performance of any act in such capacity in connection with proceedings pending or prospective before any court of record, commissioner, referee or any body, board, committee or commission constituted by law or having authority to settle controversies.” Section 484.020 restricts the practice of law and engagement in law business to licensed attorneys.

A corporation is not a natural person, but rather is an artificial entity created by law.² “Being an artificial entity it cannot appear or act in person.”³ “It must act in all its affairs through agents or representatives.”⁴ “In legal matters, it must act, if at all, through licensed attorneys.”⁵ As the Missouri Supreme Court has elucidated:

The law does not treat individuals and corporations equally. The law allows an individual to bear the risk that representation without an attorney may entail. Natural persons may represent themselves in situations which, if done for someone else, would constitute the practice of law. Unlike individuals, corporations are not natural persons, but are creatures of statute. Businesses operating in corporate form are entitled to certain benefits that are denied to others. In addition to benefits, however, corporations also have certain restrictions placed upon them. One such restriction in Missouri is that a corporation may not represent itself in legal matters, but must act solely through licensed attorneys.⁶ (Internal citations omitted).

² *Stamatiou v. El Greco Studios, Inc.*, 935 S.W.2d 701, 702 (Mo. App. 1996); *Clark v. Austin*, 101 S.W.2d 977 (Mo. banc 1937). The same is true of L.L.C.’s. See Sections 347.187 through 347.187, RSMo 2000, known as the “Missouri Limited Liability Company Act.” “A limited liability company (LLC) is a statutory form of business organization ... that combines characteristics of business corporations and partnerships. *Crouse v. Mineo*, 658 S.E.2d 33, 36 (N.C. App. 2008). “A limited liability company may not transact business or incur indebtedness, *except that which is incidental to its organization* or to obtaining subscriptions for or payment of contributions, until the articles of organization have been filed with the secretary or until the formation date specified in the articles of organization.” Section 347.037.4; *Briar Road, L.L.C. v. Lezah Stenger Homes, Inc.*, 256 S.W.3d 131, 138 (Mo. App. S.D. 2008).

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *Reed v. Labor and Indus. Relations Com’n*, 789 S.W.2d 19, 21 (Mo. banc 1990).

“Filings by a lay person on behalf of a corporation will be considered untimely filed, null and void.”⁷ Moreover, any decision reached by the Commission in a matter where a corporation was not appropriately represented by an attorney is void.⁸

CPL, not being a natural person representing only itself, must be represented by an attorney authorized to practice law in Missouri in order for it to appear before the Commission in this Complaint. On August 5, because CPL’s complaint was defective, the Commission issued a notice of deficiency for CPL’s failure to have appropriate legal representation, and informed CPL that the Commission would take no further action in this matter until such time as the deficiency was corrected. CPL did not respond to the notice of deficiency, and on November 3, ninety days after CPL filed its complaint, the Commission issued a show cause order directing CPL to show cause why its complaint should not be dismissed for failure to prosecute.

Commission Rule 4 CSR 240-2.116(2) provides that: “[c]ases may be dismissed for lack of prosecution if no action has occurred in the case for ninety days and no party has filed a pleading requesting a continuance beyond that time.” CPL failed to correct the deficiency in its complaint. CPL took no action to prosecute its complaint. CPL did not respond to the Commission’s show cause order. Therefore, the Commission shall dismiss CPL’s complaint.

⁷ *Stamatiou*, 935 S.W.2d at 702; *Clark*, 101 S.W.2d at 982-985.

⁸ *Clark*, 101 S.W.2d at 982-985. In this case, three non-attorneys who represented corporations before the Missouri Public Service Commission were found to be guilty of contempt of the Missouri Supreme Court for violating the statutes forbidding any one not an attorney from performing any act in a representative capacity in

THE COMMISSION ORDERS THAT:

1. The complaint filed by Crain Pest and Lawn, L.L.C. on August 5, 2009, against Embarq Missouri, Inc., d/b/a Embarq, is dismissed without prejudice.
2. This order shall become effective on December 3, 2009.
3. This case shall be closed on December 4, 2009.

(S E A L)

BY THE COMMISSION



Steven C. Reed
Secretary

Clayton, Chm., Davis, Jarrett, Gunn,
and Kenney, CC, concur.

Stearley, Senior Regulatory Law Judge